LIBRARY
SUPREME COURT

Supreme Court, U.S.
FILED
MAR 1 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970.

No. 1214.

ROBERT T. WOOD,

Petitioner,

vs.

JOHNSTON BRONZE CO.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

RICHARD A. OVIATT,
1226 Engineers Building,
Cleveland, Ohio 44114,
Attorney for Respondent.

ROBERT T. WOOD, *Pro Se,*
3637 Silsby Road,
University Heights, Ohio 44118,
Petitioner.

THE GOTES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-0337

TABLE OF CONTENTS.

STATEMENT OF THE CASE 1

QUESTIONS PRESENTED 2

REASONS FOR DENYING WRIT 3

I. The dismissal of petitioner's appeal by the Court of Appeals, Eighth Judicial District, State of Ohio, on the ground that petitioner did not timely file his notice of appeal does not present a question involving petitioner's rights, privileges, and immunities secured by the Constitution of the United States 3

II. Respondent affirmatively showed that the Court of Common Pleas, Lawrence County, Commonwealth of Pennsylvania, rendered a judgment against petitioner, and that said court had jurisdiction to render said judgment, thereby complying with Ohio Revised Code, section 2309.36, Pleading and Proving Judgment 4

III. Petitioner's claim is unsubstantial and frivolous thereby entitling respondent to damages pursuant to 28 U.S.C. § 1912 5

CONCLUSION 6

TABLE OF AUTHORITIES.

Cases.

Curren vs. Brooks, 142 Ohio St. 107, 50 N.E.2d 995 (1943) 3

Dunscombe vs. Sayle, 340 F.2d 311 (5th Cir., 1965) cert. den. 382 U.S. 814, 86 S. Ct. 32, 15 L. Ed. 2d 62 (1965) 5

Ginsburg vs. Stern, 295 F.2d 698 (3rd Cir., 1961) 5

Griffin Wellpoint Corp. vs. Munro-Langstroth, Inc., 269 F.2d 64 (1st Cir., 1959) 5

Keesicker vs. G. M. McKelvey Co., 141 Ohio St. 162, 47 N.E.2d 211 (1943) 3

Kotch vs. DeGrab, 168 Ohio St. 506, 156 N.E.2d 465 (1959) 3

Lowe vs. Willacy, 239 F.2d 179 (9th Cir., 1956) 5, 6

Statutes.

Ohio Revised Code, Section 2309.36 ..... 2, 4

Ohio Revised Code, Section 2505.07 ..... 2, 3

28 U.S.C. § 1912 ..... 2, 5

In the Supreme Court of the United States

OCTOBER TERM, 1970.
No. 1214.

ROBERT T. WOOD,
Petitioner,

vs.

JOHNSTON BRONZE CO.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO.

BRIEF OF RESPONDENT IN OPPOSITION.

STATEMENT OF THE CASE.

Respondent obtained a judgment against petitioner in the Common Pleas Court of Lawrence County, Commonwealth of Pennsylvania, as judgment was confessed on a warrant of attorney October 9, 1964. On October 15, 1969, in attempting to transfer said judgment to the jurisdiction of the Ohio courts, respondent filed a petition for money only on foreign judgment in the Cuyahoga County Court of Common Pleas, State of Ohio. Petitioner was personally served with process, and respondent was subsequently awarded summary judgment on said petition December 10, 1969. Petitioner, a third year law student choosing to represent himself, subsequently filed a motion for new trial December 20, 1969, which motion was treated as a motion for reconsideration. Said motion was granted February 6, 1970, and after reconsideration, the court sustained its prior ruling and upheld granting respondent's motion for summary judgment. Petitioner sub-

sequently filed a notice of appeal to the Court of Appeals, Eighth Judicial District, Cuyahoga County, April 20, 1970. On May 11, 1970, respondent filed a motion to dismiss appeal on the ground that said appeal was not properly perfected pursuant to Ohio Revised Code, section 2505.07. Respondent's motion to dismiss was granted, and said appellate court subsequently denied petitioner's motion to allow right to appeal, motion for leave to present additional evidence, and application for re-hearing. Petitioner subsequently filed a notice of appeal to the Ohio Supreme Court June 8, 1970, said court denied petitioner's motion supporting jurisdiction October 14, 1970. Petitioner subsequently filed this petition for writ of certiorari.

QUESTIONS PRESENTED.

1. Whether the dismissal of petitioner's appeal by the Court of Appeals, Eighth Judicial District, State of Ohio, on the ground that petitioner did not timely file his notice of appeal presents a question involving petitioner's rights, privileges, and immunities secured by the Constitution of the United States.

2. Whether respondent affirmatively showed that the Court of Common Please, Lawrence County, Commonwealth of Pennsylvania, rendered a judgment against petitioner, and that said court had jurisdiction to render said judgment, thereby complying with Ohio Revised Code, section 2309.36, Pleading and Proving Judgment.

3. Whether petitioner's claim is unsubstantial and frivolous thereby entitling respondent to damages pursuant to 28 U.S.C. § 1912.

REASONS FOR DENYING WRIT.

I. The dismissal of petitioner's appeal by the Court of Appeals, Eighth Judicial District, State of Ohio, on the ground that petitioner did not timely file his notice of appeal does not present a question involving petitioner's rights, privileges, and immunities secured by the Constitution of the United States.

Respondent submits that the Cuyahoga County Court of Appeals dismissed petitioner's appeal on the ground that petitioner did not timely file his notice of appeal in accordance with Ohio Revised Code, section 2505.07. Petitioner admits in his statement of the case that respondent's summary judgment was reaffirmed February 6th and his notice of appeal was not filed until April 20th, some seventy-three days later. It is clear that petitioner did not timely file said notice, and as a result, the appellate court had no jurisdiction to entertain his appeal. *Curren vs. Brooks*, 142 Ohio St. 107, 50 N.E.2d 995 (1943); *Kotch vs. DeGrab*, 168 Ohio St. 506, 156 N.E.2d 465 (1959). Once so dismissed, the only question for review is whether said dismissal was proper, as only the "particular order or judgment appealed from may be reviewed." *Keesicker vs. G. M. McKelvey Co.*, 141 Ohio St. 162, 47 N.E.2d 211 (1943), Syl. 2.

Respondent submits that the question herein is extremely narrow, and certainly does not involve petitioner's rights, privileges, and immunities secured by the United States Constitution. Petitioner has no one to blame but himself for his negligence in failing to keep abreast of his case and timely filing his notice of appeal.

II. Respondent affirmatively showed that the Court of Common Pleas, Lawrence County, Commonwealth of Pennsylvania, rendered a judgment against petitioner, and that said court had jurisdiction to render said judgment, thereby complying with Ohio Revised Code, section 2309.36, Pleading and Proving Judgment.

This case commenced as a relatively simple matter as respondent merely transferred its Pennsylvania judgment to Ohio in order to attempt to effect collection. At the hearing on respondent's motion for summary judgment, petitioner, choosing to represent himself, offered no evidence to support his contention that the Pennsylvania court did not have jurisdiction or that the judgment was void. He submitted no brief or affidavit in support of his position. Petitioner readily admitted that he received a $2,000.00 loan from the respondent and that he signed a note empowering any attorney of any court of record within the United States to appear and confess judgment. Before the court and attached to respondent's petition was a certified copy of the Pennsylvania court record showing that judgment had been confessed against petitioner. Such is clearly more than "a mere recital of jurisdiction." Contrary to petitioner's derogatory and unjust criticism, the Cuyahoga County Court of Common Pleas gave petitioner every consideration, but found on the evidence presented that reasonable minds could come to but one conclusion, and pursuant thereto, respondent was awarded summary judgment. Respondent had clearly complied with Ohio Revised Code, section 2309.36, Pleading and Proving Judgment. The difficulty in dealing with petitioner is reflected when he attempts to vacate a Pennsylvania judgment in an Ohio court, when he files a motion for new trial after the court granted respondent's motion for summary judgment, and when he waited some seventy-three days after

the entry on the final matter for review to file his notice of appeal, when Ohio law permits only twenty days.

III. Petitioner's claim is unsubstantial and frivolous thereby entitling respondent to damages pursuant to 28 U.S.C. § 1912.

Respondent submits that a matter of this nature appearing before this Honorable Court is absurd, and that this petition for writ of certiorari is so unsubstantial and without merit that respondent is entitled to damages for attorney fees, printing costs, and other expense pursuant to 28 U.S.C. § 1912. *Dunscombe vs. Sayle*, 340 F.2d 311 (5th Cir., 1965) cert. den. 382 U.S. 814, 86 S. Ct. 32, 15 L. Ed. 2d 62 (1965); *Lowe vs. Willacy*, 239 F.2d 179 (9th Cir., 1956); *Griffin Wellpoint Corp. vs. Munro-Langstroth, Inc.*, 269 F.2d 64 (1st Cir., 1959); and *Ginsburg vs. Stern*, 295 F.2d 698 (3rd Cir., 1961).

There should be no question that the only issue presented by this appeal is whether or not this case was properly dismissed by the Cuyahoga County Court of Appeals. Ohio law is clear and unambiguous that the timely filing of a notice of appeal is a necessary step in perfecting an appeal, and in the absence of such timely filing, a reviewing court is without jurisdiction. The fact that petitioner completely ignored this simple fundamental issue clearly depicts his intent to annoy and harass the respondent and create additional expense in the form of attorney fees. Petitioner's filing of this petition is not a law school game or mere exercise in legal brief writing. Respondent submits that this is a serious matter and vehemently requests that this Court deal with petitioner accordingly. See *Lowe vs. Willacy*, 239 F.2d 179 (9th Cir., 1956), where the court stated:

Since appellant by her own act has forced appellee to consider her brief and thereby necessarily to write his opposing brief, in affirming we adjudge to appellee just damages for his delay, 28 U.S.C. § 1912, of double costs and an amount equal to the fee paid his attorney for his services in the appeal and the amount paid for the printing of his brief, the two latter amounts to be shown by appellee's affidavit filed with the Clerk of this Court. *Lowe vs. Willacy*, Id. at 180.

CONCLUSION.

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

RICHARD A. OVIATT,

Attorney for Respondent.